



American Planning Association
California Chapter

Making Great Communities Happen

February 2, 2009

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1400 10th Street
PO Box 3044
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SUBJECT: Comments on Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions Pursuant to SB 97

Dear Mr. Peterson:

Thank you for the opportunity to submit comments on the proposed CEQA Guideline changes. Several of APA California's members have also been participating in your various working groups that assisted OPR in developing the SB 97 CEQA Guideline Amendments. We appreciate OPR's efforts to reach out to planning practitioners.

Below is a list of comments from our own AB 32 Climate Change subcommittee, which includes comments from those that have been working with OPR this past year.

General Comments:

1. ***Insert CEQA provisions of SB 375 verbatim in appropriate sections, to make the Guidelines the complete and comprehensive reference for addressing GHGs in CEQA documents.*** Delete reference to sustainable communities strategies in the rest of the proposed Guidelines revisions to avoid confusion.

Rationale: SB 375 has its own unique way to address CEQA streamlining for projects consistent with sustainable communities strategies. It's true that CEQA provisions of SB 375 could be amended by 2009 clean-up legislation, but any such amendments could be included in the Guidelines prior to January 2010 if permitted by OAL procedures, or picked up in the next round of Guidelines changes. (It has been common for the Guidelines to be out of sync with recently-enacted legislation until the next opportunity for Guidelines revisions.)

2. [Connect AB 32 and CEQA and define what it means to be consistent with AB 32 regulations.](#) At the present time, there is no direct connection between AB 32 and CEQA's requirements for consideration of cumulative impacts. This has led to a conundrum as we try to develop CEQA significance thresholds for greenhouse gas emissions. Projects that cannot demonstrate they are consistent with AB 32 will be thrown into an EIR because of the cumulative impacts. When dealing with a cumulative impact, a project's contribution may still be a cumulatively significant, even though the project's individual contribution is less than significant. The Communities for a Better Environment (CBE) case's invalidation of the "de minimus" exception remains a problem as well. Language should be included in the Guidelines, or alternatively in CEQA, that clarifies what "consistent with AB 32" means, i.e., reducing emissions to 30% below business as usual, and the "de minimus" exemption should be reinstated.

Comments on Specific Sections:

1. [15064\(h\) \(1\)\(3\):](#) Delete regional housing allocation plan, regional blueprint plan, sustainable community strategy, and statewide plan of mitigation for GHGs from the list of plans establishing requirements to render a cumulative effect not cumulatively considerable. Delete "within the geographic area in which the project is located," since global climate change is a cumulative impact not limited to the project area.

Rationale: Regional housing allocation plans do not establish environmental requirements. Regional blueprint plans are not required to be implemented; if relied upon, a condition should be added "to the extent they have been implemented through general plan revisions or amendments." Sustainable communities strategy streamlining is addressed in a unique way by SB 375. A statewide plan of mitigation of GHGs does not exist. If the reference is to the AB 32 scoping plan, the scoping plan represents a regulatory strategy to be implemented through subsequent sector-specific plans or regulations. The scoping plan does not establish mitigation requirements that can be applied at a project-specific level.

2. [15064\(3\)\(3\):](#) Expanding the list of previously approved plans and programs to include climate action plans, regional blueprint plans, sustainable community strategies, and statewide GHG mitigation plan is commendable. *It is very important to take the focus of project-by-project GHG evaluation and promote more programmatic CEQA coverage of the issue.* Adding "or other plans adopted to reduce GHG emissions" after "climate action plans" would broaden the applicability of this section. This addition would be helpful in later sections where climate action plans are referenced. The lack of a regulatory definition of climate action plans is not a major concern. Zoning program, water quality control plan don't have definitions, but are understandable. The key is that the plan is adopted to reduce GHG emissions to less than significant.

[15064.4:](#) An initial statement should be added as follows: "Normally, increases in GHG emissions are significant if they would contribute to a cumulatively considerable impact on global climate change." The added section on determining significance is very helpful. The definition of "help attainment" is clear. A definition of "hinder attainment" is needed to avoid inconsistent

application. A definition could simply be: “if a project is not consistent with” a limit or plan, program, or regulation implementing AB 32. It would also be useful to add “based on substantial evidence” to the determination of helping or hindering attainment. In (2), adding a comma after “fossil fuels” would clarify that the modifying clause, “that contribute...consumed” applies to the first part of the sentence, and not just to fossil fuels. In (b), “available information”, which is undefined in law, should be replaced with “substantial evidence”. Also, a good faith effort is required, in general for environmental analysis, elsewhere in the guidelines and in case law, so the verb “shall” is more appropriate.

3. [15064.4\(a\)\(1\)](#): Limit section (1) to consistency with plans, programs, and regulations adopted to implement AB 32. Delete reference to a project helping or hindering AB 32’s statewide GHG emissions reduction goal; this test is too vague, and could be interpreted to find a project’s impact significant if it does not reduce emissions to 1990 levels.
4. [15064.4\(a\)\(4\)](#): add a last phrase, “including GHG thresholds adopted by ARB and air districts.”
5. [15064.4\(a\)\(5\)](#): Add a new subsection to read “Whether a project or community is LEED certified.”
6. [15064.4\(b\)](#): It’s OK to allow flexibility in the choice of quantitative or qualitative methods, but delete the justification that methodologies for performing emissions calculations are anticipated to evolve over time. Established methodologies to calculate GHG emissions already exist and are being used in CEQA documents, and the fact they may evolve over time does not justify a qualitative analysis. Clarify wording of subsection (2) as follows: “Rely on qualitative *analysis* or ~~other~~ performance based standards for *determining* the significance of GHG emissions.”
7. [15064.7](#): Highlighting that a lead agency may consider thresholds from other supported by substantial evidence is a good revision.
8. [15064.7\(c\)](#): Specifically mention thresholds adopted by ARB and air districts as examples.
9. [15125\(a\)](#): Add the following: “In some cases, global climate change may be predicted to cause reasonably foreseeable future changes in the environmental setting during the lifetime of a project. In that case, future environmental conditions as modified by global climate change may be discussed in the environmental setting, and may be used as the baseline to analyze impacts on affected resources such as water supply, floodplains, and ecosystems.”

Rationale: The Guidelines should address the effects of global climate change on the project and the environment. This is a beginning.

10. [15126.2\(a\)](#): Add a concluding sentence as follows: Similarly, the EIR should evaluate locating people and properties in flood hazard areas, both as currently delineated and as may be modified in the future by global climate change.
11. [15126.4\(c\)\(1\)](#): Changing “should” to “shall” is more in line with the statute.

12. [15126.4\(c\)\(2\)](#): Delete “which are incorporated into the project” to avoid confusion.
13. [15126.\(c\)\(3\)](#): In this section, “substantially lessen the potential impacts of the project” should be changed to “reduce the impacts of the project to less than significant” to avoid ambiguity.
14. [15126.4\(c\)\(4\)](#): Change “carbon or carbon-equivalent” to “greenhouse gas” emissions for consistency. Add a concluding phrase, “to the extent such measures can be shown by substantial evidence to permanently sequester the project’s GHG emissions.”
15. [15126.4\(c\)\(5\)](#): Replace as follows: “Mitigation measures may include off-site measures or purchase of carbon offsets or credits, provided the emission reductions achieved by these measures are effective, verifiable, and enforceable. These measures should be employed only to the extent that on-site mitigation is infeasible.”

Rationale: Offsite measures and offsets are not as certain to reduce GHG emissions as on-site mitigation. Note there is precedent for sequencing mitigation in the Guidelines: for archeological resources, avoidance is preferred to excavation/recovery. Stakeholders also suggested that a mitigation hierarchy should be included in the Guidelines so projects implement avoidance and reduction before offsets. It was not included, but it is important to prioritize avoidance and minimization of GHG before compensation through offsets. The hierarchy should be included in the guidelines.

Also, add the clarification that a “reasonable plan” includes a verification process, based on substantial evidence, that the program is effective in reducing GHG.

16. [15130\(a\)\(3\)](#): Modify this section to be consistent with the modifications to Section 15064(h)(3). That section addresses cumulative impact significance when determining whether to prepare an EIR; this section addresses cumulative impact significance when an EIR is prepared.
17. [15130\(a\)\(3\)\(1\)\(B\)](#): Delete regional blueprint plan and regional housing allocation plan for reasons stated earlier. Modify the next to last sentence as follows: “Projections may also be summarized from a certified environmental document prepared for such an adopted local or regional plan.” Delete regional computer modeling programs, since they are not adopted plans, and since “reflecting the most accurate and reasonably available information” is vague and subject to too much interpretation. Adopted RTPs and certified RTP EIRs are a better source of regional modeling projections.
18. [15130\(d\)](#): Delete regional blueprint plans and sustainable communities strategies for reasons stated earlier.
19. [15130\(f\)](#): Replace with: “An EIR shall evaluate a project’s incremental GHG emissions to determine whether they would contribute to a cumulatively considerable impact on global climate change. Global climate change projections may be derived from authoritative scientific sources such as the UNIPCC, the US Climate Science Program, and the California Climate Action

Team.” Note that “should” in the current (f) is not consistent with the statute. It needs to be “shall” to be consistent.

20. 15152(i): If “CEQA documents” is changed to “EIRs”, it will be consistent with the CBE case. Otherwise, it may imply that an ND may be adopted after an EIR with unavoidable GHG impacts, which may be contrary to case law.
21. Program EIR: APA suggests adding provisions to Section 15168 that promote use of program EIRs for streamlining related to GHG effects that are already covered in a program EIR. This section is not constrained by the CBE case.

Appendix F: The term “wasteful, inefficient, and unnecessary consumption of energy” should be deleted as it is subjective. Replace with language promoting increased conservation, energy efficiency, and use of non-fossil-fuel energy sources. Add “renewable energy features” and “energy efficiency improvements” to the mitigation list in part D. In part E, add “and energy efficiency” after “energy consumption”.

22. Appendix G, preamble: add a concluding phrase: “though they can be used as starting points for thresholds of significance.” On Page 1, add “Applicable greenhouse gas emissions limit, if any” to the project data about a project.
23. Appendix G, Greenhouse Gas Emissions: replace with the following:

Would the project:

- a) Result in a cumulatively considerable impact on global climate change through a net increase in GHG emissions?

Rationale: Matches language of Air Quality question IIIc more closely. This keeps GHG impacts cumulative, not project-specific. Recognizes that the cumulative environmental effects of GHG emissions (global climate change) are the impacts of concern, not GHG emissions per se. Though worded poorly, SB 97 requires that the guidelines address the “mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions,” implying an intent that the CEQA Guidelines address the effects of GHGs on global climate change. Also, in the CBD v. NHTSA case, the Ninth Circuit clearly required NEPA documents to both analyze GHG emissions, and to analyze the cumulative effects of these GHG emissions on global climate change. The CEQA Guidelines should be consistent.

- b) Conflict with or obstruct the implementation of any plan, policy, or regulation adopted for the purpose of reducing GHG emissions?

Rationale: Matches language of Air Quality question IIIa more closely.

- c) Exceed an applicable CEQA threshold of significance, supported by substantial evidence, adopted by ARB or an air district?

Rationale: Recognizes special expertise of ARB and air districts on GHGs, and integrates their thresholds with the Initial Study checklist, just as other environmental regulatory programs are integrated. If there is a concern that the thresholds are set too low, the lead agency could set a higher threshold, supported by substantial evidence. If there is a concern that the agency thresholds are set too high, then the lead agency is free to set a lower standard supported by substantial evidence; if the agency thresholds that are too high are used, they can be judicially challenged using the fair argument standard of review.

Climate vulnerability should be included: The absence of climate vulnerability from the checklist is conspicuous, especially in light of the recent sea level rise executive order and the fact that AB 32's policies are explicitly based on avoiding the environmental and other risks of global warming. References could be appended to appropriate questions that clarify "including consideration of how global warming may change conditions". This would avoid the need for a separate section within which all climate vulnerability issues are addressed (although this is another viable option). These references should be added for hazards related to sea-level rise, flooding, and wild fire, and potential implications on water supply at a minimum.

Support removal of Levels of Service reference: APA California believes that removal of the Levels of Service references in Appendix G makes sense, particularly in light of the need to reconcile potential local GHG increases from projects and policies that result in actual regional GHG reductions. However, we would also support including in the Guidelines an explanation of why LOS was removed if jurisdictions need clarification that using LOS is not in violation of the Guidelines to avoid lawsuits while the jurisdictions pursue alternative methods of analysis for balanced transportation needs.

If you have any questions, please contact Sande George, Stefan/George Associates, 916-443-5301, sgeorge@stefangeorge.com.

Sincerely,

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